

SENATE BILL NO. 241

Montana Petroleum Association

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Senate Natural Resources Committee

Reclamation Plans are already required for CBNG projects by the Record of Decision adopted by the Board in 2003. A special reclamation plan is required because of the nature of CBNG involves project level planning. Most non-CBNG projects are developed one well at a time and reclamation is covered and required by Administrative Rule.

(Italics are the Bill's proposed language)

Section 1. Reclamation plan and specific reclamation requirements. (1) *Taking into account the site-specific conditions and circumstances, including the uses of the area after oil and gas operations have ceased, the board shall require all land affected by oil and gas operations to be reclaimed consistent with the requirements and standards set forth in this section.*

(2) *An application for a drilling permit must be accompanied by a reclamation plan. The board shall approve the reclamation plan if it adequately provides for the accomplishment of the requirements and standards set forth in this section. A drilling permit may not be issued without a reclamation plan approved by the board.*

The Board does not approve drilling permits – approval is delegated to staff. SB241 indicates the Board approves reclamation plans – is it intended that this function can also be delegated to staff? If not significant delays in approving conventional oil and gas drilling will occur.

(3) *Except in emergency situations, any changes to a reclamation plan must be approved by the board.*

Wells can produce for many years; a plan filed with a permit may be obsolete by the time it is to be implemented. Having general reclamation requirements in Rule rather than statute or in an obsolete plan are more efficient and cost effective.

(4) *Reclamation activities, to the extent feasible, must be conducted simultaneously with the oil and gas operation and must be initiated within 60 days after completion or abandonment of the oil and gas operation on those portions of the affected land that will not be subject to further disturbance by oil and gas operations.*

Requiring reclamation to begin within 60 days will either require operator and the Board to ignore the law or result in some minor token reclamation to occur during winter and early spring when ground freeze up prevents meaningful reclamation from occurring. Simultaneous reclamation is only feasible for linear projects like pipelines and power line construction – not all of these activities are regulated by the Board

(5) Reclamation activities must commence within 2 years after completion or abandonment of the oil and gas operation unless an extension is granted by the board.

This is less restrictive than current rules "All earthen pits used in association with drilling and completion operations must be closed and the surface restored according to board specifications within one year after the cessation of drilling operations. (ARM 36.22.1005)"

(6) A reclamation plan must include sufficient measures to ensure public safety and prevent the pollution of air or water and the degradation of areas adjacent to the oil and gas operation.

This is generally covered under existing rule: "36.22.1307 RESTORATION OF SURFACE (1) The owner of any well drilled in search of oil and gas or for injection purposes or the driller of a stratigraphic test or core hole or seismographic shot hole shall, as soon as weather or ground conditions permit, upon the final abandonment and completion of the plugging of any well or after a seismographic shot hole has been utilized, restore the surface of the location to its previous grade and productive capability and take necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representative, to a different plan of restoration."

(7) All land affected by an oil and gas operation must be restored to a comparable utility and integrity as that of adjacent areas under sound management not subjected to oil and gas operations.

Is "comparable utility and integrity" the same as "previous grade and productive capability"? Who determines that adjacent areas are under "sound management"?

(8) Final grading must be made with nonnoxious, nonflammable, noncombustible solids unless the board approves a supervised sanitary fill.

The Board does not approve sanitary fills and the only material used to cover the site is top soil. This entire section has been copied from the metal mine reclamation statutes 82-4-336MCA ...presumably noxious in this context is acid rock or tailings, but it is not defined here either.

(9) Vegetative cover must be appropriate to the future use of the land and must meet county standards for weed control.

The future use of the land is determined by its owner that is why current law allows the surface owner to request an alternative plan of reclamation: "(4) the restoration of surface lands to their previous grade and productive capability ... unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration"(82-11-123)

(10) Vegetative cover and grading must minimize the amount of precipitation allowed to infiltrate areas used during an oil and gas operation as wastewater impoundments, land application and disposal sites, or other salt-laden areas.

This section is also lifted from the mining reclamation laws; the purpose of the requirement is to prevent formation of acid mine drainage see MCA 82-4-336 (12): "The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps." Board rules already prohibit disposal in unlined earthen impoundments of wastewater containing more than 15,000 parts per million of dissolved solids it is unlikely that such facilities will become "salt-laden" and require special reclamation procedures.

11) Provisions must be made for soil salvage and replacement, handling and disposal of drill hole cuttings, and management of wastewater, including water produced by coal bed methane operations and ground water discharges after oil and gas operations cease.

Current Board rules address disposal of drill cuttings, drilling mud, excess fluids and solid waste: 36.22.1005 DRILLING WASTE DISPOSAL AND SURFACE RESTORATION

(1) The operator of a drilling well must contain and dispose of all solid waste and produced fluids that accumulate during drilling operations so as not to degrade surface water, groundwater, or cause harm to soils. Said waste and fluids must be disposed of in accordance with all applicable local, state and federal laws and regulations.

(2) When a salt-based or oil-based drilling fluid is used to drill a well located within a floodplain, as defined by ARM 36.15.101, or in irrigated cropland, drilling waste and produced fluids that accumulate during drilling operations must be disposed of off-site in a manner allowed by local, state, and federal laws and regulations unless an alternative on-site disposal method is approved in writing by the board administrator.

(3) The operator of a drilling well must construct, close, and restore any reserve pits in a manner that will prevent harm to the soil and will not degrade surface waters or groundwater. When a salt-based or oil-based drilling fluid is used, the reserve pit must be lined with a synthetic liner approved by the board administrator.

Furthermore, "Ground water discharge after oil and gas operations cease" is undefined; if this refers to unplugged wells, Board rules require them to be permanently plugged unless a landowner signs a release and register the well with DNRC.

(12) To prevent saline seep, the reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation allowed to infiltrate into former wastewater impoundments, land application and disposal sites, or other salt-laden areas.

Redundant – same concept as in #10 – a direct quote from hard rock mining requirements intended to address acid mine drainage

(13) Wastewater impoundments, disposal sites, and areas where water was applied to land must be reclaimed to a condition that:

- (a) withstands geologic and climatic conditions without significant failure;
- (b) avoids accumulation of stagnant water to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life;
- (c) is not a threat to the environment;
- (d) affords some utility to humans or the environment; and
- (e) mitigates or prevents undesirable offsite impacts.

Lifted directly from 82-4-336; easier to understand these requirements in context with the opening part "(b) With regard to open pits and rock faces, (emphasis added) the reclamation plan must provide sufficient measures for reclamation to a condition:

- (i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;
- (ii) that affords some utility to humans or the environment;

- (iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and
- (iv) that mitigates or prevents undesirable offsite environmental impacts."

"Geologic and climatic conditions" is not defined, but refers to slope stability in the context of 82-4-336. Affords "some utility to humans or the environment" refers to mine related facilities or structures left behind after mine reclamation; these concepts are undefined in an oil and gas reclamation context.

14) Any measures agreed to between the oil and gas developer or operator and the surface owner may be included in the reclamation plan if those measures are consistent with the requirements of this section.

If the reclamation plan is truly consistent with the new requirements, the surface owner has few options. There appears to be a conflict between existing law which provides that "unless the surface owner agrees in writing... to a different plan of restoration" which is proposed to be unchanged and the proposed requirements in new section one.